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3
4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 UNITED STATES OF AMERICA,

7
8 Plaintiff,

9 v.

10 ALKA PATEL, HETAL BAROT,
11 SACHIN JASVNT BAROT,
12 BHAVESH PATEL, and DARSHAN
13 PATEL,

14 Defendants.
15

No. 2:17-CR-0034-TOR-2

No. 2:17-CR-0034-TOR-3

No. 2:17-CR-0034-TOR-4

No. 2:17-CR-0034-TOR-5

No. 2:17-CR-0034-TOR-6

MEMORANDUM OF
PROCEEDINGS BEFORE THE
SENTENCING MAGISTRATE
JUDGE

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17 The five defendants in this cause are allegedly citizens of India. They were
18 charged with illegal entry into the United States in violation of 8 U.S.C. § 1325, a
19 petty offense carrying a maximum punishment of 6 months in custody and 5 years
20 of probation. ECF No. 230-1-5.

21 On the day of their arrest, the Department of Homeland Security, Bureau of
22 Customs and Immigration Enforcement (ICE) lodged deportation orders against
23 each defendant.

24 After being denied pretrial release, all five defendants pleaded guilty as
25 charged.

26 Defendants requested a sentence of probation, with conditions, with the goal
27 of being out of custody while prosecuting their asylum claims before the
28 immigration authorities. Defendants argued that such a sentence would effectively

1 shield them from being detained or deported during the term of probation,
2 analogizing to case law holding that pretrial release on conditions per the Bail
3 Reform Act precludes ICE action until the criminal case is adjudicated. *See United*
4 *States v. Trujillo-Alvarez*, 900 F.Supp.2d 1167 (D. Or. 2012); *United States v.*
5 *Blas*, 2013 U.S. Dist. LEXIS 135283 (S.D. Ala. 2013).

6 Defendants also asserted that 18 U.S.C. § 3563(b)(21) permits a court to
7 order ICE not to interfere with a term of probation. Defendants argued that since
8 this statute authorizes deportation as a discretionary condition of probation, it
9 necessarily assumes discretion to impose a converse condition prohibiting
10 deportation during probation.

11 The United States opposed probation and recommended a sentence of credit
12 for time served. The United States asserted that the “jurisdiction stripping”
13 provision of the Illegal Immigration Reform and Immigrant Responsibility Act, 8
14 U.S.C. § 1252(g), as interpreted in *Reno v. American-Arab Anti-Discrimination*
15 *Committee*, 525 U.S. 471 (1999), prohibited this Court from interfering with any
16 deportation proceedings which had not been reduced to a final order by
17 immigration authorities.

18 The United States also cited 8 U.S.C. § 1231(a)(4)(A), to the effect that
19 parole, supervised release, probation, or possibility of arrest or further
20 imprisonment are not reasons to defer removal.

21 This Court determined that, considering the purposes of sentencing set forth
22 18 U.S.C. § 3553(a)(1) & (a)(2), it would be an abuse of discretion to order
23 probation for the purpose of thwarting ICE proceedings. Since Defendants had no
24 prior criminal records, had been adequately punished by their pretrial confinement,
25 and manifested no circumstances requiring post-conviction monitoring (no
26 ongoing threat to society due to violence, drug dependency or mental health issues,
27 and no unmet obligations such as restitution), the Court sentenced Defendants to
28 credit for time served and ordered their release.

1 The Court further found it did not have discretion to order a condition of
2 probation prohibiting deportation. The Court determined that the authorities and
3 rationale requiring adjudication of a criminal charge before giving effect to ICE
4 detainers was not applicable in a post-conviction setting.

5 Upon the Court's sentence and order of release, Defendants became subject
6 to the previously lodged ICE "I-203" detainers and deportation orders.

7 Defendants filed a Notice of Appeal, but did not ask the Court to stay its
8 sentence. The Notice of Appeal creates a possibility of resentencing. An appeal
9 divests the trial court from control of those aspects of the case involved in the
10 appeal. *See United States v. Ortega-Lopez*, 988 F.2d 70, 72 (9th Cir. 1993), citing
11 *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Estate of*
12 *Conners by Meredith v. O'Connor*, 6 F.3d 656 (9th Cir. 1993). Accordingly, this
13 Court entered an order releasing Defendants from custody, and directing they
14 remain in contact with the United States Probation Office pending the appeal or
15 resentencing.

16 DATED May 18, 2017.

A handwritten signature in black ink, appearing to be "M", is positioned above a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE